

In the Matter of SOUTHERN COTTON OIL COMPANY AND SOUTHPORT
PAINT COMPANY *and* FEDERAL LABOR UNION #23698, A. F. L.

Case No. 10-R-1263.—Decided November 16, 1944

Mr. Alexander E. Wilson, Jr., of Atlanta, Ga., and *Mr. George O'Donnell*, of Savannah, Ga., for the Companies.

Messrs. George H. McGee and *George R. Smith*, of Savannah, Ga., for the Union.

Mr. Samuel G. Hamilton, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition¹ duly filed by Federal Labor Union #23698, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Southern Cotton Oil Company, Savannah, Georgia, herein called Southern, and Southport Paint Company, Savannah, Georgia, herein called Southport, both referred to herein collectively as the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Arthur C. Joy, Trial Examiner. Said hearing was held at Savannah, Georgia, on October 2, 1944. The Companies and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. On October 9, 1944, the Companies filed a joint brief requesting that the amended petition be dismissed for the reasons that (1) since the Union did not request recognition from Southport, no question concerning representation has arisen; and (2) inclusion of watchmen in a bargaining unit, as requested in the amended petition, would be against public policy and contrary to the war effort. As an alternative to their request that

¹ Petition amended so as to name Southport Paint Company as a party.

the amended petition be dismissed because it seeks the inclusion of watchmen, the Companies ask that an appropriate unit be established excluding watchmen. For reasons set forth in Sections III and IV, *infra*, we hereby deny the Companies' application for a dismissal of the amended petition.²

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Southern Cotton Oil Company is a New Jersey corporation with numerous properties scattered throughout the country. Only those at Savannah, Georgia, located on Lathrop Avenue, are involved in this proceeding. Southport Paint Company is a Delaware corporation and the Savannah plant, located on Lathrop Avenue, which is involved in this proceeding, is the only plant owned by it. It is a wholly-owned subsidiary of the Southern Cotton Oil Company, which apparently has ultimate control over its business and labor policies.

The principal raw materials used by Southern are cottonseed and crude vegetable oils. Most of the cottonseed is purchased in Georgia and South Carolina, approximately 50 percent in each State. The cottonseed purchased has an annual value of approximately \$500,000. Crude oil is purchased by Southern principally in North and South Carolina, Georgia, Florida, and Alabama. The value of the crude oil purchased annually is in excess of \$1,000,000. The principal finished products of Southern are cottonseed meal, hulls, fertilizer, shortening, cooking oil, and salad oil. The meals, hulls, and fertilizers are sold principally in Georgia and South Carolina, approximately 50 percent in each State. The remaining products are sold in Virginia, West Virginia, North and South Carolina, Florida, and Alabama; a very small percentage is sold in West Virginia, and Alabama, and the balance is fairly evenly divided among the other four States. The annual value of its products is in excess of \$1,000,000.

Southport buys raw materials consisting of pigments, linseed oil, and varnish in the States of Pennsylvania, New Jersey, New York, and Georgia. Its sales, which exceed \$300,000 annually, are made in southeastern States, approximately 80 to 85 percent of which represents sales of products sold and shipped to points outside the State of Georgia.

The Companies do not deny, and we find, that they are engaged in commerce within the meaning of the National Labor Relations Act.

² As noted in Section IV, *infra*, watchmen are excluded from the appropriate unit.

II. THE ORGANIZATION INVOLVED

Federal Labor Union #23698, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Companies.

III. THE QUESTION CONCERNING REPRESENTATION

On July 17, 1944, the Union informed Southern that it represented a majority of Southern's employees. Subsequently, Southern refused to accord recognition to the Union unless it was first certified by the Board. The Companies claim that no request for recognition was made of Southport, and consequently no question concerning representation has arisen.

In the instant proceeding the Union seeks to represent employees engaged both by Southern and Southport. The amended petition filed by the Union reflects this fact. Moreover, the Union's desire in this respect was brought home to the Companies at the time of the hearing. In fact, as will hereinafter be indicated, all parties agree that the appropriate unit should embrace employees of both Companies at the latter's properties on Lathrop Avenue, Savannah, Georgia. Yet the Companies did not state at the hearing that they would accord recognition to the Union as the representative of the employees in the unit hereinafter found appropriate.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.⁴

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union seeks a bargaining unit consisting of all employees of the Companies at their properties on Lathrop Avenue, Savannah, Georgia, including subforemen and watchmen, but excluding the employees of the peanut shelling plant, the employees of the crude mill or crushing plant, all general office employees, laboratory chemists and analysts, shipping clerks, and supervisory employees above the grade of subforemen. The Companies agree with the position of the Union, except that they would exclude the watchmen.

³ See *Matter of Houston Blow Pipe and Sheet Metal Works*, 53 N. L. R. B. 184.

⁴ The Field Examiner reported that the Union submitted 224 application for membership cards; that the names of 236 persons appearing on the cards were listed on the Companies' pay rolls, which contained the names of 239 employees in the alleged appropriate unit; and that the cards were dated: 113 in May 1944, 48 in June 1944, 25 in July 1944, 3 in August 1944, 33 in September 1944, and 2 undated. Southport's Savannah plant has 26 employees, for whom the Union submitted 17 cards.

Watchmen. The Companies employ four regular watchmen and one who acts as a substitute watchman. The substitute watchman acts as a yard foreman the major portion of his time while not engaged as a watchman. All five watchmen are deputized and armed, but not uniformed. In view of our customary policy of excluding deputized watchmen or guards from units of production and maintenance employees, we shall exclude the five watchmen.⁵

We find that all employees of Southern Cotton Oil Company and of Southport Paint Company at their properties on Lathrop Avenue, Savannah, Georgia, including subforemen,⁶ but excluding the employees of the peanut shelling plant, the employees of the crude mill or crushing plant, all general office employees, clerical employees, laboratory chemists and analysts, shipping clerks, watchmen, supervisory employees above the rank of subforemen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein⁷ subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Southern Cot-

⁵ *Matter of Cincinnati Gas & Electric Company*, 57 N. L. R. B. 1298. Although the Union requested a separate unit of watchmen in the event of their exclusion from the comprehensive unit hereinafter found appropriate, there is no evidence of its representation among these employees. We shall not, therefore, establish a separate unit of watchmen, but this action shall be without prejudice to the filing of a petition affecting such employees.

⁶ The parties agree to include these employees. We are persuaded from the record that they do not fall within the meaning of our customary definition of supervisory employees.

⁷ While the Companies and the Union ask that an eligibility date of October 4, 1944, be used, no reason was assigned for this request. Consequently, we shall adhere to our customary procedure.

ton Oil Company and Southport Paint Company, Savannah, Georgia, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Tenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Federal Labor Union #23698, affiliated with the American Federation of Labor, for the purposes of collective bargaining.